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SENATE BILL 80

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

John Arthur Smith

FOR THE LEGISLATIVE FINANCE COMMITTEE

AN ACT

RELATING TO TAXATION; PROVIDING A PAYMENT DATE FOR THE FIRST
QUARTERLY PAYMENT OF ESTIMATED CORPORATE INCOME TAX;
RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN
LAWS 2003; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-2A-9.1 NMSA 1978 (being Laws 1986,
Chapter 5, Section 1, as amended by Laws 2003, Chapter 86,
Section 2 and by Laws 2003, Chapter 295, Section 1) is amended
to read:

"7-2A-9.1. ESTIMATED TAX DUE--PAYMENT OF ESTIMATED TAX--
PENALTY--EXEMPTION.--

A. Every taxpayer shall pay estimated corporate
income tax to the state of New Mexico during its taxable year
if its tax after applicable credits is five thousand dollars

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1 (\$5,000) or more in the current taxable year. A taxpayer to
2 which this section applies shall calculate estimated tax by one
3 of the following methods:

4 (1) estimating the amount of tax due, net of
5 any credits, for the current taxable year, provided that the
6 estimated amount is at least eighty percent of the amount
7 determined to be due for the taxable year;

8 (2) using as the estimate an amount equal to
9 one hundred percent of the tax due for the previous taxable
10 year, if the previous taxable year was a full twelve-month
11 year;

12 (3) using as the estimate an amount equal to
13 one hundred ten percent of the tax due for the taxable year
14 immediately preceding the previous taxable year, if the taxable
15 year immediately preceding the previous taxable year was a full
16 twelve-month year and the return for the previous taxable year
17 has not been filed and the extended due date for filing that
18 return has not occurred at the time the first installment is
19 due for the taxable year; or

20 (4) estimating the amount of tax due, net of
21 any credits, for each fiscal quarter of the current taxable
22 year, provided that the estimated amount is at least eighty
23 percent of the amount determined to be due for that quarter.

24 B. If Subsection A of this section applies, the
25 amount of estimated tax shall be paid in installments as

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1 provided in this subsection. Twenty-five percent of the
2 estimated tax calculated under Paragraph (1), (2) or (3) of
3 Subsection A of this section or one hundred percent of the
4 estimated tax calculated under Paragraph (4) of Subsection A of
5 this section is due on or before the following dates: the
6 fifteenth day of the fourth month of the taxable year, the
7 fifteenth day of the sixth month of the taxable year, the
8 fifteenth day of the ninth month of the taxable year and the
9 fifteenth day of the twelfth month of the taxable year.
10 Application of this subsection to a taxable year that is a
11 fractional part of a year shall be determined by regulation of
12 the secretary.

13 C. Every taxpayer to which Subsection A of this
14 section applies that fails to pay the estimated tax when due or
15 that makes estimated tax payments during the taxable year that
16 are less than the lesser of eighty percent of the income tax
17 imposed on the taxpayer under the Corporate Income and
18 Franchise Tax Act or the amount required by Paragraph (2), (3)
19 or (4) of Subsection A of this section shall be subject to the
20 interest and penalty provisions of Sections 7-1-67 and 7-1-69
21 NMSA 1978 on the underpayment.

22 D. For purposes of this section, the amount of
23 underpayment shall be the excess of the amount of the
24 installment that would be required to be paid if the estimated
25 tax were equal to eighty percent of the tax shown on the return

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1 for the taxable year or the amount required by Paragraph (2),
2 (3) or (4) of Subsection A of this section or, if no return was
3 filed, eighty percent of the tax for the taxable year for which
4 the estimated tax is due less the amount, if any, of the
5 installment paid on or before the last date prescribed for
6 payment.

7 E. For purposes of this section, the period of
8 underpayment shall run from the date the installment was
9 required to be paid to whichever of the following dates is
10 earlier:

11 (1) the fifteenth day of the third month
12 following the end of the taxable year; or

13 (2) with respect to any portion of the
14 underpayment, the date on which such portion is paid. For the
15 purposes of this paragraph, a payment of estimated tax on any
16 installment date shall be applied as a payment of any previous
17 underpayment only to the extent such payment exceeds the amount
18 of the installment determined under Subsection D of this
19 section due on such installment date.

20 F. For the purposes of this section, the amount of
21 tax deducted and withheld with respect to a taxpayer [~~by a~~
22 ~~remitter~~] under the Withholding Tax Act or the Oil and Gas
23 Proceeds Withholding Tax Act shall be deemed a payment of
24 estimated tax. An equal amount of the amount of withheld tax
25 shall be deemed paid on each due date for the applicable

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1 taxable year unless the taxpayer establishes the dates on which
2 all amounts were actually withheld, in which case the amounts
3 withheld shall be deemed payments of estimated tax on the dates
4 on which the amounts were actually withheld. The taxpayer may
5 apply the provisions of this subsection separately to amounts
6 withheld under the Withholding Tax Act or the Oil and Gas
7 Proceeds Withholding Tax Act."

8 Section 2. APPLICABILITY.--The provisions of Section 1 of
9 this act are applicable to taxable years beginning on or after
10 January 1, 2009.

11 Section 3. EMERGENCY.--It is necessary for the public
12 peace, health and safety that this act take effect immediately.